IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.

S. B. CIVIL MISC. APPEAL NO. 2726//2003

M/S. AHIMSA MINES & MINERAL LTD. & ANOTHER
v
BABU LAL SHARMA

DATE OF JUDGMENT: 14th MARCH, 2007.

Hon'ble Mr. Justice R. S. Chauhan

Mr. Nitin Jain for the appellants.
Mr. Sanjay Mehla for the respondent.

By Court:

This appeal arises out of the award dated 30.11.2002 passed by the Commissioner, Workmen's Compensation, whereby, the learned Commissioner has awarded Rs. 1,31,970/- as compensation to the workman, Babu Lal Sharma.

The brief facts of the case are that the respondent was engaged as a workman at the appellant's factory. On 30.2.99, around 8.00 p.m., the Manager, Shri Rajeev Purohit, the appellant No.2 before this Court, suddenly turned on the machines. Consequently, the workman's both hands were caught in the machine and according to the respondent, the fingers of both the hands were amputated. He also suffered a fracture in his head due to the said accident. Since he had suffered grave injuries, the respondent filed

claim petition before the learned Commissioner for a compensation of Rs. 1,51,430. The appellant Nos. 1 and 2 filed their reply wherein they claimed that the respondent was hired as an unskilled worker and was assigned the work of cleaning dryer and the mixture machine. He was neither authorised to operate the machine. Therefore, the accident occurred only due to his own carelessness and negligence. Thus, they denied their liability for the payment of the compensation. After going through the oral and documentary evidence, the learned Commissioner granted an award as aforementioned. Hence this appeal by the employer-appellants.

Mr. Nitin Jain, learned counsel for the appellant, has raised two contentions before this Court. Firstly, that according to the certificate issued by the Medical Board, the age of the workman was 26 years old on the date of the accident. However, while ignoring this evidence, which was available on record, the learned Commissioner has taken his age to be 23 years. Therefore, the learned Commissioner has applied a factor of 219.95, whereas according to the IVth Schedule attached to the Workmen's Compensation Act (henceforth to be referred to as 'the Act', for short), the factor of 215.28 should have been applied as the workman was 26 years old. Therefore, the learned Commissioner has failed to apply the correct factor in the instant case. Thus, he has erroneously applied the law. Secondly, according to the said

certificate, the workman had suffered only a disability to the extent of 20.20%. However, the learned Commissioner has concluded that the workman has suffered a disability of 50% . Such a conclusion is unwarranted by the scientific evidence available on the record. Therefore, the learned Commissioner has ignored an evidence apparent on the record. In case, the relevant factor and the extent of disability is taken into account, the compensation needs to be reduced accordingly. The learned counsel has also informed this Court that the appellants have already deposited Rs. 66,075/- with the learned Commissioner. However, the workman is entitled to only Rs. 53,359.50/- in accordance with law.

On the other hand, Mr. Sanjay Mahla, learned counsel for the respondent, has vehemently argued that the workman had lost all his fingers of both the hands in the accident. Since the record of the case had not been called by this Court and since it was imperative that the extent of disability be known, vide order dated 6.10.06, this Court directed the respondent to physically appear before this Court on 1.11.06. On 1.11.06, the respondent appeared before this Court and this Court discovered that the respondent has his fingers intact and they have not been amputated. Still, in order to know the extent of disability suffered by him, vide order dated 1.11.06 this Court directed the Superintendent, S.M.S. Hospital, Jaipur to constitute a Medical Board and to examine the respondent

about the extent of his injuries and about the extent of his disability. Vide report dated 8.11.06, the Board informed this Court that the respondent is suffering a disability of only 20.50%. It was also revealed in the report that presently the respondent is 32 years old. Therefore, on the date of the accident, the respondent was 25 years old. Hence, the learned Commissioner has wrongly concluded that the respondent was 23 years old at the time of the accident. Tlhus, a wrong factor of 218.74 was applied in the present case. In fact while assessing the compensation, taking his age to be 25 years, a factor of 216.91 should have been applied. Thus, according to this, the respondent is entitled to a compensation of 20.50% of 1200 x 216.91 = 53,359.50/-. Since Rs. 66,075/- have already been deposited with the learned Commissioner, the learned Commissioner is directed to release the compensation award amount of Rs. 53,359.50/- alongwith 9% interest from the date of the accident i.e. 30.4.99. The learned Commissioner is directed to release the said amount within a period of one month from the date of the receipt of the certified copy of this order.

In the result, the appeal is allowed as indicated above.

(R.S. CHAUHAN) J.

MRG.